

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMAZON.COM SERVICES LLC, a Delaware limited liability company,

No.

Plaintiff,

V.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

JOEL SACKS, in his official capacity as the Director of the Department of Labor & Industries of the State of Washington, and

The Department of Labor & Industries of the
State of Washington,

Defendants.

I. INTRODUCTION

1. The safety of Amazon's employees is critically important to Amazon – every day and in every operation. Amazon has a comprehensive, innovative, and robust workplace health and safety program, staffed by thousands of workplace safety professionals and designed to ensure that employees throughout Amazon's sort and fulfillment network are working safely and that employee safety improves over time.

2. In March 2022, despite Amazon’s robust ergonomics program and a decrease in injury rates between 2019 and 2022, the Washington State Department of Labor and Industries Division of Occupational Safety and Health (“the Department”) inspected a fulfillment facility in Kent, Washington, known as “BFI4.” The Department then issued a Citation and Notice of Assessment for Inspection No. 317965723 (“the Citation”), alleging several “serious willful”

1 violations, not of any specific workplace safety regulation but of the general duty of all
 2 employers to maintain a hazard-free workplace. The Citation further alleged that Amazon had
 3 failed to address various alleged ergonomic hazards despite the absence of any specific
 4 ergonomic standards in either the Washington or federal occupational health and safety laws.

5 3. Amazon challenged those allegations in state administrative proceedings, and
 6 that challenge remains pending, with an evidentiary hearing on the merits scheduled for early
 7 2023. Under the federal Occupational Safety and Health Act of 1970 and nearly all state
 8 workplace safety statutes, an employer is required to incur costs to abate – that is, remediate –
 9 an appealed violation only *after* the government has proved that the appealed violation
 10 occurred. Under Washington law, however, that standard is reversed: a company challenging
 11 a “serious” citation is required to abate the alleged hazards first, before the state has made any
 12 effort to satisfy its legal burden to prove that a violation has occurred and before the company
 13 has a meaningful opportunity to challenge the allegations. Worse, though the state has yet to
 14 prove any violation, if the company does not abate to the state’s satisfaction it can face fines of
 15 up to \$7,000 per day, per violation. In this case, Amazon could face fines of up to \$70,000 per
 16 day. Further, the state asserts that it can inspect other facilities operated by the employer, cite
 17 the employer for the same violations at other facilities, and use the previously issued but still
 18 unproven violations as evidence of “willfulness” to justify imposing even stiffer penalties and
 19 additional compliance costs.

20 4. The only way for an employer to avoid the obligation to abate is to seek and
 21 obtain a stay of abatement. But the stay of abatement timing and procedures in the Washington
 22 Industrial Safety and Health Act, Chapter 49.17 RCW (“WISHA”), do not afford a company
 23 sufficient time to obtain expert assistance (which is essential in complex disputes over ill-
 24 defined standards like those at issue here and where the state is itself relying on expert
 25 opinions), prohibit employers from subpoenaing relevant documents or cross-examining the
 26 state’s witnesses, impose various procedural requirements, shift the state’s burden of proof to
 27 the employer to disprove alleged hazards, and foreclose any appeal of a decision denying a

1 stay. What is more, even when an employer challenges a citation, the Department insists that
 2 employers sign an “Employer Certification of Abatement Form” that requires that employers
 3 admit – under risk of criminal penalties – that “hazards” exist. Thus, before the Department
 4 proves any violation, employers are required to concede under oath and at risk of criminal
 5 sanction that a violation occurred. This highly unusual structure stacks the deck in the
 6 Department’s favor, leaving employers no meaningful opportunity to contest an abatement
 7 requirement.

8 5. By requiring employers like Amazon to incur significant financial and
 9 operational burdens to abate alleged hazards *before* the Department has proven a violation of
 10 any workplace safety rules and failing to provide a meaningful opportunity for employers to
 11 contest the abatement requirement or appeal the denial of a request to stay abatement,
 12 WISHA’s stay of abatement procedures violate the due process clause of the Fourteenth
 13 Amendment to the United States Constitution.

14 6. Amazon, therefore, seeks a declaratory judgment that WISHA’s stay of
 15 abatement procedures violate the due process clause of the Fourteenth Amendment and an
 16 injunction prohibiting the Department from requiring that Amazon implement costly,
 17 burdensome, and potentially unnecessary abatement measures until the Department carries its
 18 burden of proving that Amazon has, in fact, violated any safety or health regulation.

19 **II. NATURE OF THE ACTION**

20 7. Amazon seeks a declaratory judgment, pursuant to 42 U.S.C. § 1983 and 28
 21 U.S.C. §§ 2201 and 2202, that the stay of abatement procedures set out in RCW 49.17.140(4)-
 22 (6), the implementing rules and regulations, and Department practices deprive Amazon and
 23 other employers of substantive and procedural protections afforded by the due process clause of
 24 the Fourteenth Amendment to the United States Constitution.

25 8. Amazon seeks a preliminary injunction prohibiting enforcement of the WISHA
 26 provisions requiring abatement of alleged hazards pending final resolution of this challenge and
 27 then a permanent injunction prohibiting enforcement of WISHA’s abatement mandates.

III. PARTIES

9. Amazon is a Delaware company with its principal place of business in Seattle, Washington.

10. Defendant Department of Labor & Industries is an agency of the State of Washington with authority to enforce and implement the relevant parts of WISHA, RCW 49.17 *et seq.*

11. Defendant Joel Sacks, acting under color of state law, is the Director of the Department of Labor & Industries of the State of Washington and is responsible for the administration of the relevant parts of WISHA.

IV. JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3). This action arises under the due process clause of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983, and the Declaratory Judgment Act, 28 U.S.C §§ 2201 and 2202.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Washington.

14. Pursuant to Local Civil Rule 3(e), intra-district assignment to the Seattle Division is proper because the claims arose in this Division and Amazon has its principal place of business in this Division.

V. BACKGROUND FACTS

A. Amazon Protects Its Associates from Ergonomic Risks.

1. Amazon Invests and Innovates to Protect Its Associates.

15. Amazon's ability to serve customers begins and ends with Amazon's employees, and Amazon is determined to be a leader in employee health and safety. In 2021, Amazon invested \$300 million in safety improvements, including capital improvements, new safety technology, vehicle safety controls, and engineering ergonomic solutions. The same

1 year, Amazon launched a five-year, \$12 million partnership with the National Safety Council,
 2 which was the largest corporate contribution in the organization's history. This partnership
 3 focuses on the reduction of ergonomic injuries and in particular musculoskeletal disorder risks.
 4 See <https://www.nsc.org/newsroom/amazon-and-nsc-create-first-of-its-kind-partnership>.
 5 Amazon's safety team also more than tripled in the past four years, from 2,400 safety
 6 professionals to more than 8,000, and the team is dedicated to using the science of safety to
 7 solve complex problems and establish new industry best practices.

8 16. When Amazon invests in safety, it leverages its operational, engineering, and
 9 design expertise to get results. Between 2019 and 2022, Amazon has made meaningful
 10 improvements in protecting the health and safety of its associates. For example, Amazon's
 11 recordable incident rate at BFI4 (a rate that measures how often an injury or illness occurs at
 12 work) has dropped by more than 33% from 2019 to the present. Likewise, Amazon observed
 13 meaningful reductions in musculoskeletal injuries at BFI4 and continues to invest in studying
 14 and understanding ergonomic risk.

15 **2. Amazon Has Fully Implemented Its Ergonomics Program at the
 16 BFI4 Fulfillment Center in Kent.**

17 17. BFI4 is an Amazon fulfillment center in Kent, Washington, in which Amazon
 18 associates process orders that contain items weighing less than 50 pounds and are assisted by
 19 robotic conveyance. BFI4 covers roughly 1.1 million square feet and employs an average of
 20 2,850 people during non-holiday months, increasing to an average of 3,300 from October to
 21 December.

22 18. Amazon employs approximately 19 health and safety professionals at BFI4,
 23 including a workplace health and safety manager, workplace health and safety specialists,
 24 onsite medical representatives, and injury prevention specialists. The workplace health and
 25 safety manager oversees safety throughout BFI4, but all of the health and safety professionals
 26 at BFI4 are responsible for implementing, enforcing, and improving Amazon's safety program
 27 at the facility.

1 19. BFI4 also has a dedicated ergonomics leadership team, comprised of health and
 2 safety professionals and operations managers. The team's mission is to identify and manage
 3 ergonomic risk. They are supported in this mission by the corporate Human Factors and
 4 Ergonomics team, which includes more than a dozen specialized ergonomics professionals.
 5 This team is responsible for developing programs to eliminate and reduce musculoskeletal
 6 disorder risks for facilities in North America. The Human Factors and Ergonomics Team also
 7 provides program assistance and subject matter expertise to ergonomics leadership teams at
 8 North America facilities, including BFI4.

9 20. BFI4's three injury prevention specialists, all certified athletic trainers, conduct
 10 site-specific ergonomic assessments to evaluate every process path in the facility and review
 11 and refresh these assessments annually. The results of these assessments determine what injury
 12 prevention efforts are prioritized by BFI4's ergonomics leadership team. Safety staff at BFI4
 13 also monitor weekly injury reports and review trends monthly, and if they identify patterns
 14 indicating ergonomic risks in specific process paths, the site prioritizes those paths for
 15 individual assessment and associate coaching.

16 21. Consistent with Amazon's commitment to the National Institute of Occupational
 17 Safety and Health's hierarchy of safety controls, BFI4 uses engineering controls to design out
 18 risk where possible. For example, BFI4 has implemented Destuff-IT and Restuff-IT
 19 conveyors, which are telescoping conveyors with height-adjustable work platforms that extend
 20 through the length of a trailer. These telescoping conveyors allow associates to extend and
 21 modify the height of the conveyor platform to eliminate the need for awkward reaching or
 22 bending when loading or unloading trailers.

23 22. Other examples of engineering controls at BFI4 include lowering of conveyors
 24 used by associates in "pack singles" work areas to reduce potential shoulder stresses when
 25 reaching for totes, redesigning the ladder railings at workstations in the "stow" work area to
 26 improve posture, and adding a small platform at workstations in the "AFE pack" areas to
 27 reduce the potential for awkward reaches in higher shelves.

23. BFI4 implements administrative controls required by Amazon's ergonomics policy as well. BFI4 trains associates extensively on good body mechanics, including through the "Safety School" training for new hires, daily reinforcement teachings from BFI4's injury prevention specialists, and implementation of the WorkingWell Program where associates regularly receive wellness information.

24. Finally, all associates at BFI4 are encouraged to work comfortably and safely. Associates who violate a safety rule are subject to Amazon's progressive disciplinary policy. By contrast, only certain associates within the facility are subject to performance reviews that include productivity considerations. And within that group, only associates whose productivity falls below the fifth percentile are potentially subject to counseling and training that is designed to help them improve their performance.

B. The Statutory Scheme.

1. WISHA's Statutory Scheme Denies Employers a Meaningful Opportunity to Obtain a Stay of an Abatement Order.

25. WISHA authorizes the Department to issue citations and order abatement of alleged workplace safety violations. Under WISHA and its implementing regulations, the Department classifies violations as “general,” “serious,” “willful,” “repeat,” or “failure to abate,” depending on the level of potential harm they pose to workers. WAC 296-900-14010. For violations classified as anything other than “general” or “repeat general,” the Department requires immediate abatement unless the employer appeals the citation to the Board of Industrial Insurance Appeals and obtains a stay of the abatement requirement pending decision on the appeal of the underlying citation. RCW 49.17.140(5). WISHA requires the Board to consider the employer’s request to stay abatement on an expedited schedule separate from its eventual consideration of the appeal of the citation. RCW 49.17.140(5)(c).

26. Under this expedited schedule, an employer has only 14 days to compile and submit any supporting materials for the Board to consider when ruling on the request to stay abatement. WAC 263-12-059(3)(c)(i). The Department and any affected employees have until

1 a Board-imposed deadline (no longer than 28 days from the date of the notice of appeal) to file
 2 materials in opposition. WAC 263-12-059(3)(c)(ii). The Board has authority to grant
 3 continuances for good cause, but only so long as it is able to render a decision within 45 days of
 4 the Board's receipt of the appeal.

5 27. In ruling on the stay request, the Board considers only evidence that goes to
 6 whether the employer has shown good cause to stay abatement and whether "it is more likely
 7 than not that a stay would result in death or serious physical harm to a worker." RCW
 8 49.17.140(5)(e). Under this scheme, an employer bears the burden of proving that abatement is
 9 unnecessary before the Department has even proven that any violation exists.

10 28. Neither the statutory nor regulatory scheme contemplates reply briefs, and oral
 11 argument on the stay request is not permitted. WAC 263-12-059(5). Nor do the rules allow
 12 employers to subpoena documents, conduct depositions, or cross-examine witnesses when
 13 seeking a stay of abatement. Expert testimony is critical in any case involving an applied
 14 science like ergonomics, as the Department demonstrates by relying heavily on expert
 15 testimony in its opposition to Amazon's stay request. Washington's default 14-day period in
 16 which to submit stay materials deprives employers of a meaningful opportunity to develop and
 17 present expert testimony in support of a stay or to refute Department experts. In contrast, the
 18 Department has six months to conduct an inspection, gather evidence, work with experts, and
 19 issue a citation.

20 29. Additional procedural constraints further hamper an employer's ability to obtain
 21 a stay of abatement pending the outcome of a hearing on the merits of the underlying citation.
 22 Under Board regulation WAC 263-12-059(4), the Board "will deny" a request for a stay of
 23 abatement if, among other things, the employer does not request the stay in its notice of appeal,
 24 "fails to include union information" in its notice of appeal (even if the employer's workforce is
 25 not represented by any union), or "fails to timely file a certification that its employees have
 26 been notified about the appeal and the request for stay of abatement[.]" The Board will not
 27 grant a stay, even if it is warranted, if the employer trips over any of these technicalities.

1 30. If the Board denies an employer’s request for stay of abatement, the employer
 2 has no ability to appeal the Board’s denial to the state’s superior courts or anywhere else.

3 **2. WISHA’s Abatement Procedures Require Employers to Abate
 4 Before the Department Has Satisfied Its Burden of Proof.**

5 31. If the Board denies a stay of abatement request, an employer is required to abate
 6 alleged violations even before the Department has proven a violation exists. If an employer
 7 chooses not to comply with the abatement requirement, the Department can assess significant
 8 financial penalties, which can be as high as \$7,000 per day, per violation. *See* RCW
 9 49.17.180(2)-(4).

10 32. In addition to requiring employees to correct alleged violations, WISHA’s
 11 abatement procedures force employers to make admissions under oath, even when an employer
 12 disputes the citation. Specifically, the Department will not consider an employer to have
 13 abated an alleged violation until the employer completes the “Employer Certification of
 14 Abatement Form.” This form compels the employer to admit under oath, subject to criminal
 15 penalties, that the alleged violation *is* a “hazard” and that the employer “corrected the hazard.”
 16 Thus, before the Board determines a violation actually exists, employers must admit the
 17 Department’s allegations under oath or face penalties for failing to abate the alleged violation.

18 33. Furthermore, in cases involving alleged violations of the General Duty Clause,
 19 as in this case, WISHA’s abatement procedures eliminate the Department’s burden of proof on
 20 an essential element of a General Duty Clause violation and require the employer to relinquish
 21 a potential merits defense. Specifically, to establish a General Duty Clause violation, the
 22 Department is required to prove that feasible means exist to eliminate the hazard or materially
 23 reduce it. Forcing an employer to identify feasible means of abatement and certify that it has
 24 “corrected the hazard” before the Department satisfies its burden of proof relieves the
 25 Department of its burden and essentially forecloses the employer’s opportunity to argue in the
 26 actual hearing on the merits that no feasible means of abatement exist.
 27

1 34. The Department is also authorized to inspect other facilities operated by the
 2 employer during the pendency of an appeal. Regardless of whether a previous citation remains
 3 under appeal, the Department takes the position that it can cite the employer for the same
 4 violations at those other facilities and use the previously issued, unproven, and appealed
 5 citations as evidence of willfulness. This means that previously issued but appealed citations
 6 can become the basis for stiffer penalties (possibly increased by a factor of 10) and additional
 7 compliance costs, even though the Department has not yet proven the alleged initial violation.
 8 *See WAC 296-900-14015.*

9 35. Paradoxically, WISHA's stay of abatement procedures provide less protection
 10 against error than the stay and appeal procedures available to employers for true emergencies.
 11 In situations where the Department believes a "violation is such that a danger exists from which
 12 there is substantial probability that death or serious physical harm could result to an employee,"
 13 the Department "may issue an order immediately restraining any such condition, practice,
 14 method, process, or means in the workplace." RCW 49.17.130. Should that occur, an
 15 employer may petition the Superior Court for review and relief. In addition, the Department
 16 may petition the Superior Court to enjoin the alleged condition or practice. RCW 49.17.170.
 17 Such court review of Department orders is not available to an employer that is denied a stay of
 18 abatement.

19 **C. The Department Cites Amazon and Requires Immediate Abatement of
 20 Alleged Ergonomics Hazards.**

21 36. The Department began its investigation of Amazon facilities with inspections of
 22 Amazon's fulfillment centers at DuPont and Sumner. The Department issued two citations to
 23 DuPont and one citation to Sumner for alleged violations of the General Duty Standard, based
 24 on alleged ergonomic risks. Amazon appealed those citations, and those appeals remain
 25 pending. Despite those appeals, the Department initiated its investigation of BFI4 for the same
 26 alleged violations.
 27

1 37. Department inspectors visited BFI4 three times during their investigation: one
 2 day in September 2021, one day in December 2021, and one day in January 2022. The first
 3 visit was a walk-around to organize the Department’s inspection. Over the course of the other
 4 two days, inspectors conducted surveys and observed associates, but they did not interview
 5 BFI4’s workplace health and safety managers or specialists, onsite medical representatives,
 6 injury prevention specialists, or any other member of BFI4’s 19-person health and safety team.

7 38. The Department’s investigation culminated in the issuance of a Citation and
 8 Notice of Inspection on March 9, 2022.¹ The Citation alleges that Amazon committed 11
 9 “serious willful” violations the General Duty Clause, assessed a \$60,000 fine, and gave
 10 Amazon 60 days to develop and implement its own abatement plan or immediately implement
 11 the Department’s abatement recommendations.

12 39. The Department justifies its “serious willful” classification by asserting that
 13 Amazon has been aware of the alleged ergonomic violations because the Department cited
 14 Amazon for similar violations at its DuPont and Sumner fulfillment centers, even though BFI4
 15 is a distinct facility, Amazon challenged the merits of those prior citations, and Amazon’s
 16 challenges are still awaiting a hearing.

17 **D. The Citation Irreparably Harms Amazon.**

18 40. In the Citation, the Department provided a list of “Feasible Methods of
 19 Abatement.” These abatement measures closely mirror and in some cases copy verbatim the
 20 abatement measures the Department specified in the citations it issued to Amazon’s DuPont
 21 and Sumner fulfillment centers. And in the absence of any specific ergonomic standard under
 22 Washington law, the Citation also failed to identify an objective ergonomic standard by which
 23 Amazon can measure whether it has complied with the abatement mandates.

24 41. The costs of abating alleged hazards that Amazon disputes and that the
 25 Department has not yet proven are substantial. As a threshold matter, there is no clear
 26 ergonomic standard or risk level against which to measure “abatement,” meaning employers

27 ¹ All subsequent dates are to 2022 unless otherwise specified.

1 have no ascertainable certainty about what the Department will deem satisfactory beyond the
 2 abatement measures the Department proposes in a citation. That lack of clarity affords the
 3 Department near limitless discretion to interfere in the details of company operations, all in the
 4 name of reducing unsubstantiated alleged hazards.

5 42. In the citation for BFI4, the Department has proposed that Amazon implement
 6 changes in controls for ten different job paths, and for each of those, the Department is
 7 effectively directing Amazon to purchase and install a suite of specialized equipment, including
 8 telescoping conveyors, vacuum lifts, powered cart tuggers, electric pallet jacks, and height-
 9 adjustable platforms. The costs of implementing these changes for all ten job tasks throughout
 10 a 1.1 million square foot facility will easily be in the millions of dollars, but it will also be
 11 tremendously disruptive to Amazon's operations, requiring a comprehensive redesign of BFI4
 12 and installation, training, and plans to address new health and safety risks associated with the
 13 operation of new and large, powered industrial equipment. Moreover, by forcing Amazon to
 14 make the Hobson's choice between abating unproven harms with unproven technologies or
 15 facing fines for refusing to abate, the Department's action will harm Amazon's good will and
 16 reputation with its customers, the public, and Amazon associates.

17 43. The Department, on the other hand, has not shown that allowing Amazon's
 18 appeal of the citation to be decided first, before requiring abatement, will endanger associates at
 19 BFI4. Even if the changes the Department has proposed were feasible (and Amazon does not
 20 concede that they are), the Department has presented no evidence that they will materially
 21 reduce ergonomic risk or have any effect whatsoever on ergonomic injury rates. Amazon's
 22 comprehensive workplace safety and ergonomics program has reduced musculoskeletal injuries
 23 at BFI4 and will continue to identify, address, and design out specific risks to protect associates
 24 during the pendency of Amazon's appeal. Requiring significant and untested abatement
 25 measures is unnecessary and potentially counterproductive before the Board determines, after a
 26 full hearing and consideration of all of the evidence, whether the Department can satisfy its
 27 burden to prove any violation and what, if any, violation must be remedied.

1 **E. Amazon Appeals and Requests a Stay of Abatement, but the Board Denies
It without Considering the Merits.**

2 44. Amazon timely appealed the Citation and request for stay of abatement on
3 March 31, 2022. Amazon received the Notice of Filing of Appeal on April 8, and the notice
4 specified a deadline of April 18 for Amazon to provide evidence in support of its request to
5 stay abatement. The Board granted Amazon's motion to extend the deadline to May 2, which
6 is when Amazon submitted its stay motion. Even with this extension, Amazon had only 24
7 days to prepare its motion for stay.

8 45. In preparing its submission in support of its request for a stay, Amazon had only
9 the bare-bones citation and an incomplete copy of the Department's inspection file. Amazon
10 did not have all of the evidence and records the Department relied on in issuing its citation, nor
11 did it have all of the data the Department's ergonomists used to conclude that Amazon
12 employees were exposed to undue ergonomic hazards. In fact, the Department did not provide
13 all of its data to Amazon until *after* the Board denied Amazon's stay request. Given the limited
14 time available under the Board's procedural rules, Amazon also had no opportunity to compel
15 discovery of the remainder of the administrative record or depose or cross-examine witnesses
16 and present oral argument. Instead, Amazon had to submit a separate public records request to
17 obtain the data and records the Department relied on in issuing the Citation, and even then, the
18 Department did not provide the complete inspection record until after Amazon submitted its
19 stay motion.

20 46. These defects are not mere inconveniences, as the Department's evidence in
21 opposing Amazon's stay request included multiple expert declarations suggesting
22 unsubstantiated causal links between Amazon's work practices, pace of work, and recorded
23 injuries. Only after careful examination of the Department's inspection records, only a portion
24 of which Amazon received before its stay of abatement request was due (with the Department
25 providing the balance well after the stay briefing was completed), did Amazon have the
26 opportunity to discover that the Department's allegations were based on faulty and incomplete
27 data and unreasoned risk calculations.

1 47. On May 27, the Board denied Amazon’s request to stay abatement based on
 2 procedural technicalities in the Board’s regulations that neither party had briefed. Specifically,
 3 the Board denied the stay motion because Amazon allegedly had not notified the Board about
 4 unions representing workers affected by the appeal (notwithstanding that workers at BFI4 are
 5 not represented by a union) and did not certify that it had notified its associates of its intent to
 6 appeal the Citation. Although the statute governing motions for a stay of abatement provides
 7 that the Board “shall grant” a stay of abatement unless the evidence indicates that “it is more
 8 likely than not that a stay would result in death or serious physical harm to worker,” RCW
 9 49.17.140(5)(e), the Board declined to even analyze the issue, instead avoiding it entirely based
 10 on the above technicalities.

11 48. The Board sent its Order denying the stay request to the parties by U.S. mail.
 12 Amazon received the Order on Friday, June 3, and immediately completed the certification of
 13 notice to associates, which it filed with the Board the following Monday, June 6.

14 49. Counsel for Amazon also contacted counsel for the Department who stated that
 15 the Department did not object to the Board’s deciding Amazon’s stay request on the merits and
 16 would not oppose a motion for reconsideration. Accordingly, Amazon moved for
 17 reconsideration of the Board’s Order.

18 50. The Board mailed its Order denying Amazon’s motion for reconsideration on
 19 August 8, which Amazon received on August 11. In the Order, the Board admitted that one of
 20 its bases for originally denying a stay – that Amazon allegedly failed to inform the Board that
 21 there were no unions involved – was “incorrect.” The Board nevertheless denied
 22 reconsideration because Amazon filed the certification late. The Board’s Order did not
 23 mention that Amazon’s motion was unopposed, analyze the factors for reconsideration under
 24 Civil Rules 59 and 60 (which the Board’s rules incorporate), or address any of Amazon’s
 25 arguments about why its stay request should be decided on the merits.

26 51. No mechanism exists under WISHA or its regulations for Amazon to appeal the
 27 Board’s denial of the request for a stay of the abatement requirement.

1 **F. Amazon Must Invest Significant Resources and Disrupt Its Business**
 2 **Operations or Face Steep Financial Penalties Even Though the Department**
 3 **Has Not Yet Proven a Violation of Any Safety Standard.**

4 52. A full hearing on the merits of Amazon's appeal of the underlying citation for
 5 alleged ergonomic hazards at BFI4 is not scheduled to conclude until February 2023 at the
 6 earliest. In the meantime, the Department demands Amazon divert attention and resources
 7 from its own ongoing workplace safety efforts to conduct a costly study, refit and retool its
 8 BFI4 facility, and change certain operations to address unsubstantiated harms. Amazon will
 9 thus incur significant costs to change conditions or practices that the Department has not
 10 proven constitute actual ergonomic hazards and to implement new Department-mandated
 11 practices that carry their own workplace safety risks. Amazon also faces steep fines both for
 12 the Citation and for any non-compliance with the abatement requirement. And if the Board
 13 eventually finds for Amazon on the merits of the underlying appeals, Amazon cannot recover
 14 the costs of complying with the Department's abatement requirements. Amazon will also have
 15 suffered irreparable harm to its reputation, and it will have to incur additional costs to undo
 16 changes that the Department mandated improperly. Again, what the Department seeks is
 17 nothing short of a fundamental redesign and retrofit of most aspects of a roughly 1.1 million
 18 square foot facility, with disruptions for employees and customers. It demands these changes
 19 on the basis of general and unsubstantiated allegations and a vague risk standard that offers no
 20 clear barometer by which to measure risk, compliance, or risk reduction. The Department's
 21 abatement requirement also fails to consider the reasonableness, cost, effectiveness, or potential
 22 for the required changes to create new risks for Amazon's associates.

23 53. WISHA's stay of abatement regime forces employers to risk significant
 24 financial penalties or undertake expensive and disruptive measures to change conditions or
 25 practices the Department claims, but has not proven, violate workplace safety rules. The
 26 available procedures provide no meaningful opportunity for an employer to develop or present
 27 evidence in support of a request to stay abatement requirements pending the outcome of an
 28 appeal of a citation, no opportunity to appeal a denial of a stay request, and no mechanism for

1 employers to recover the costs of unnecessary abatement for unfounded allegations.

VI. CLAIMS

A. First Claim (42 U.S.C. § 1983): WISHA's Stay of Abatement Procedures Are facially unconstitutional because they violate the Fourteenth Amendment's procedural due process protections.

5 54. Plaintiff incorporates by reference the allegations of the preceding paragraphs as
6 though set forth herein.

7 55. The Fourteenth Amendment to the United States Constitution provides that no
8 state government shall “deprive any person of life, liberty, or property, without due process of
9 law. . . .” The Fourteenth Amendment applies to state administrative procedures.

10 56. WISHA's requirement that employers face steep financial penalties or abate
11 alleged ergonomic hazards before the state proves any violation, and the procedures available
12 to employers to request a stay of abatement, violate the Fourteenth Amendment's guarantee of
13 procedural due process.

B. Second Claim (42 U.S.C. § 1983): WISHA’s Stay of Abatement Procedures Violate the Fourteenth Amendment’s Procedural Due Process Protections as Applied to Amazon in This Case.

16 57. Plaintiff incorporates by reference the allegations of the preceding paragraphs as
17 though set forth herein.

18 58. WISHA's requirement that Amazon face significant financial penalties or abate
19 alleged ergonomic hazards at BFI4 based on unproven violations of the General Duty Clause,
20 and the procedures available to Amazon to request a stay of abatement, violate the Fourteenth
21 Amendment's guarantee of procedural due process.

C. Third Claim (42 U.S.C. § 1983): WISHA's Stay of Abatement Procedures Are facially unconstitutional because they violate substantive due process protections in the Fourteenth Amendment.

24 59. Plaintiff incorporates by reference the allegations of the preceding paragraphs as
25 though set forth herein.

26 60. Substantive due process guards “against arbitrary and capricious government
27 action, even when the decision to take that action is made through procedures that are in

¹ themselves constitutionally adequate.” *Halverson v. Skagit Cnty.*, 42 F.3d 1257, 1261 (9th Cir. 1994); see also *Yim v. City of Seattle*, 194 Wn.2d 682, 689 (2019).

3 61. WISHA's requirement that employers abate alleged ergonomic hazards based on
4 unproven violations of workplace safety rules or face significant financial penalties, and the
5 procedures available to employers to request a stay of abatement, violate the Fourteenth
6 Amendment's guarantee of substantive due process.

D. Fourth Claim (42 U.S.C. § 1983): WISHA’s Stay of Abatement Procedures Are Unconstitutional as Applied to Amazon in This Case Because They Violate Substantive Due Process Protections in the Fourteenth Amendment.

9 62. Plaintiff incorporates by reference the allegations of the preceding paragraphs as
10 though set forth herein.

11 63. WISHA's requirement that Amazon face significant financial penalties or abate
12 alleged ergonomic hazards at BFI4 based on unproven violations of the General Duty Clause,
13 and the procedures available to Amazon to request a stay of abatement violate the Fourteenth
14 Amendment's guarantee of substantive due process.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for the following relief:

17 A. A declaratory judgment against Defendants that the stay of abatement
18 procedures set out in RCW 49.17.140(4)-(6), the implementing rules and regulations, and
19 Department practices violate the Fourteenth Amendment to the U.S. Constitution and are both
20 facially unconstitutional and unconstitutional as applied to Amazon in connection with Citation
21 and Notice of Assessment for Inspection No. 317965723.

22 B. Preliminary and permanent injunctive relief prohibiting enforcement of the
23 challenged provisions and Department practices requiring abatement of alleged but unproven
24 hazards.

25 C. An award to Amazon for its attorneys' fees and costs incurred in this action
26 under 42 U.S.C. § 1988 and any other applicable law.

D. Such other, further, and additional relief as the Court deems just and equitable.

1 DATED this 3rd day of October, 2022.

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